



**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	

REPLY COMMENTS OF UNITED SYSTEMS ACCESS TELECOM, INC.

United Systems Access Telecom, Inc., d/b/a USA TELEPHONE, respectfully submits these reply comments regarding the Federal Communications Commission (FCC)'s Order and Notice of Proposed Rulemaking ("*Interim Order and NPRM*") in the above captioned proceeding on alternative unbundling rules that will implement the obligations of section 251(c)(3) of the Communications Act of 1934, as amended, *inter alia*, by the Telecommunications Act of 1996. *See generally* 47 U.S.C. § 151 et seq.

In comments USA TELEPHONE filed with the Commission on October 4, 2004, as part of this proceeding, USA TELEPHONE urged the Commission to create a rural "carve-out" as part of the Commission's permanent unbundling rules for competitive local exchange carriers (CLECs) serving residential and small business customers in traditionally underserved rural areas. Our initial comments proposed that the carve-out give CLECs serving wire centers with 50,000 lines or less continued access to UNE-P until such time as the wire center serves more than 50,000 lines. Rates would be set at the current Commission-set total element long run incremental cost (TELRIC) (or lower in designated areas which continue to lack competition due to TELRIC rates).

USA TELEPHONE is filing reply comments to amend its proposal to apply to CLECs serving wire centers with 50,000 lines or such number as the Commission deems appropriate. In addition, in the event that the Commission does not adopt a rural carve-out as part of the permanent rules, USA TELEPHONE urges the Commission to adopt a transition period for

carriers serving these rural areas to migrate away from UNE-P. Carriers serving wire centers of 50,000 lines, or such number that the Commission deems appropriate, would have five years to transition off of UNE-P. These carriers would have continued access to UNE-P at TELRIC rates. Such a transition period would recognize the unique challenges CLECs face in serving traditionally underserved rural areas and give CLECs interested in serving these areas more time to modify their business plans and develop a viable plan for continuing to serve these areas in the future. A transition period would also ensure that rural residential and small business customers continue to receive the benefits of competition that UNE-P has provided in these underserved areas: competitive choices and lower prices.

I. Introduction

USA TELEPHONE, based in Kennebunk, Maine, is a residential telephone company that provides bundled local and long distance service to over 30,000 customers from Maine to Virginia. The company was built to provide affordable telephone service and responsive customer care in rural geographic areas despite more attractive margins in densely populated urban and suburban geographic areas. The company seeks to provide lower pricing and better service for consumers in under and/or inadequately served markets. USA TELEPHONE's primary focus is rural residential customers. Over 90% of our customer base is residential. The rest are small businesses. The overwhelming majority of our customers live in rural areas.

USA TELEPHONE uses the unbundled networks elements-platform (UNE-P) to provide service to its customers. While the company supports the goal of moving toward facilities-based competition, and is investing in its own infrastructure to become facilities-based, the company is concerned about the likely negative impact of the *United States Telecom Association v. Federal Communications Commission*, 359 F.3d 554 (D.C. Cir., March 2, 2004) ("*USTA II*") decision on the availability of competitively priced telephone service in rural areas throughout the country.

The *USTA II* decision places great emphasis on new infrastructure but, unfortunately, it is not currently economically viable or practical to build out new infrastructure to the nation's rural areas. The only viable means of currently providing choice and competitively priced service to

residential and small business customers living in these areas is through UNE-P. Additionally, alternative services, such as cable, wireless, and Voice over Internet Protocol (VoIP) in these rural areas might become available over a period of years not months and in some very rural areas, they may never become available.

As a result, USA TELEPHONE urges the Commission to create a rural carve-out in the permanent unbundling rules for carriers serving primarily rural residential consumers and small businesses. In the alternative, USA TELEPHONE urges the Commission to adopt a transition period of five years to limit market disruption to consumers living in these rural areas and provide some continuity and stability to businesses that have relied on UNE-P as they change their business models.

II. Local Competition in Rural Markets v. Urban or Metropolitan Markets

The Telecommunications Act of 1996 was intended to open the telecommunications industry to competition and to provide alternatives to consumers. UNE-P has allowed CLECs to enter the local service market and provide consumers with competitively priced alternatives to the incumbent local exchange carriers' (ILECs') monopoly telephone service. USA TELEPHONE supports the goal of moving toward facilities-based competition and is investing in its own switch.

However, access to UNE-P continues to play a very important role in situations where it is not economically feasible for competitors to install their own facilities or where new facilities have not been built. In certain rural underserved areas where there has historically been only one service provider, it is not economically viable for competitive carriers to build out all their own facilities. CLECs in these areas face significant barriers that prevent them from providing service using their own facilities. The customers in these areas are residential and small businesses living in rural high cost areas to serve. Facilities based competition does not exist in many of these areas. To replicate the reach of the ILECs' network requires a sizeable investment from CLECs – they would need to replicate virtually the entire ILEC switching network. For

small CLECs, this is just not practicable. Given the size of the ILECs' customer base, the ILECs are able to leverage economies of scale and deploy facilities far more easily than small CLECs.

Therefore, CLECs serving rural areas need to maintain access to UNE-P, including local switching, to continue to provide service to these mass market residential and small business customers. If UNE-P does not remain available for competitive carriers serving rural areas, these residential and small business customers will not have a choice in their local service provider. Local competition in these areas is dependent upon having access to UNE-P at reasonable prices because it is not feasible for competitive carriers to replicate the ILECs' network in the nation's rural areas. In addition, the needs of individual CLECs differ based on their size and the markets they aim to serve – the large established CLEC may have very different needs from the smaller CLEC targeting a niche market such as rural residential customers. Alternative services, such as cable, wireless, and Voice over Internet Protocol (VoIP) in these areas might become available over a period of years not months and in some very rural areas, they may not become available at all. As a result, UNE-P is the only vehicle to create competition in the nation's more rural areas and give residential and small business customers in these parts of the country a choice in the local service provider.

The competitive barriers that CLECs face in rural markets are different than those of urban and metropolitan markets. In developing permanent unbundling rules, USA TELEPHONE respectfully requests the Commission consider impairment issues in both rural and urban markets, particularly the large investment costs for new infrastructure in rural markets, and that the final rules take into account the differences in serving these markets.

III. Proposed Rural Carve-Out

USA TELEPHONE urges the Commission to create a rural carve-out as part of the FCC's permanent unbundling rules for companies serving primarily rural residential consumers and small businesses. The proposed carve-out would give competitive carriers serving traditionally underserved rural areas continued access to UNE-P. Rates would be set at the current

Commission-set TELRIC rates (or lower in designated areas which continue to lack competition due to TELRIC rates).

The ILECs should be allowed to recover legitimate costs plus a reasonable profit, but prices must allow competitors to compete with the ILECs on a level playing field. If rates increase too dramatically and small CLECs serving rural residential markets are forced out of business, the ILECs will once again be these customers' only provider.

A rural carve-out would allow rural telecommunications providers to continue to provide customers in very rural areas with a competitive alternative. Key to ensuring affordable competition is a viable definition for identifying these rural areas or markets. Under the proposed carve-out, the Commission would define rural areas as areas served by wire centers with 50,000 lines or such number as the Commission deems appropriate. These areas would qualify as impaired areas - CLECs in these rural markets will be impaired in competing with the ILECs if they do not have access to UNE-P including local switching.

In the event that the Commission does not create a rural carve-out as part of the permanent rules, USA TELEPHONE urges the Commission to adopt a transition period for carriers serving these rural areas to migrate away from UNE-P. Carriers serving wire centers of 50,000 lines or such number as the Commission deems appropriate, would have five years to transition off of UNE-P. These carriers would have continued access to UNE-P at TELRIC rates. Such a transition period would recognize the unique challenges CLECs face in serving traditionally underserved rural areas and give CLECs interested in serving these areas more time to modify their business plans and develop a viable plan for continuing to serve these areas in the future. A transition period would also ensure that rural residential and small business customers continue to receive the benefits of competition that UNE-P has provided in these areas: competitive choices and lower prices.

Earlier this year, USA TELEPHONE met with a number of the Commissioners and their senior staff to discuss the idea of a rural carve-out defining rural areas using zip codes that had a certain population density per square mile using 2002 U.S. Census Bureau data. *See, Ex Parte*

Presentations of USA TELEPHONE in CC Docket No. 01-338, filed July 30, 2004 and August 13, 2004.

IV. Conclusion

Some current competitive alternative providers have announced plans to withdraw from the residential market. If businesses such as USA TELEPHONE are denied continued access to UNE-P at TELRIC rates, we will be forced out of business. The rural customers we serve will have no alternative except the ILECs and the rural residential market will again be left with a single monopolistic provider.

USA TELEPHONE wants to continue to be able to bring choice and lower prices to rural residential and small business customers in the United States. Continued access to UNE-P at fair and reasonable terms and pricing is necessary for rural providers to be able to continue to serve rural residential and small business customers while they make investments in their own facilities that will bring more advanced telecommunications services to rural America.

Continued access to UNE-P at reasonable cost based rates is essential for competitors like USA TELEPHONE to provide mass-market local telephone service to residential and small business customers in the nation's rural areas and the adoption of a rural carve-out serves the Commission's most important statutory objectives: the promotion of competition and the protection of consumers.

Respectfully submitted,

/s/

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